

ASSEMBLY BILL

No. 140

Introduced by Assembly Member Hertzberg

January 11, 1999

An act to add Article 4.6 (commencing with Section 11415) to Chapter 3 of Title 1 of Part 4 the Penal Code, relating to terrorism.

LEGISLATIVE COUNSEL'S DIGEST

AB 140, as introduced, Hertzberg. Prevention of terrorism.

Existing law proscribes various acts of terrorism.

This bill would enact the California Prevention of Terrorism Act to make it a crime for any person, with specified exceptions, to possess, develop, manufacture, produce, transfer, acquire, or retain any weapon of mass destruction, as defined, or a delivery system for enabling its use. The bill would also penalize the use of a weapon of mass destruction against a person, an animal, the food or water supply, or the environment. With specified exceptions, the bill would furthermore make it a crime to possess restricted biological agents, as defined. The bill would require a peace officer who encounters any of the restricted biological agents to immediately consult with a local public health officer for specified purposes. By creating new crimes and expanding the duties of local peace officers and public health officers, this bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated

by the state. Statutory provisions establish procedures for making that reimbursement, including the creation of a State Mandates Claims Fund to pay the costs of mandates that do not exceed \$1,000,000 statewide and other procedures for claims whose statewide costs exceed \$1,000,000.

This bill would provide that with regard to certain mandates no reimbursement is required by this act for a specified reason.

With regard to any other mandates, this bill would provide that, if the Commission on State Mandates determines that the bill contains costs so mandated by the state, reimbursement for those costs shall be made pursuant to the statutory provisions noted above.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: yes.

The people of the State of California do enact as follows:

1 SECTION 1. Article 4.6 (commencing with Section
2 11415) is added to Chapter 3 of Title 1 of Part 4 of the
3 Penal Code, to read:

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5 Article 4.6. California Prevention of Terrorism Act

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7 11415. This article shall be known and may be cited as
8 the California Prevention of Terrorism Act.

9 11416. The Legislature hereby finds and declares that
10 the threat of terrorism involving weapons of mass
11 destruction, including, but not limited to, chemical,
12 biological, nuclear, or radiological agents, is a significant
13 public safety concern. The Legislature also recognizes
14 that terrorism involving weapons of mass destruction
15 could result in an intentional disaster placing residents of
16 California in great peril. The Legislature also finds it
17 necessary to sanction the possession, manufacture, use, or
18 threatened use of chemical, biological, nuclear, or
19 radiological weapons, as well as the intentional use or
20 threatened use of industrial or commercial chemicals as
21 weapons against persons or animals.



1 11417. (a) For the purposes of this article, the
2 following terms have the following meanings:

3 (1) “Weapon of mass destruction” includes chemical
4 warfare agents, biological warfare agents, nuclear agents,
5 or radiological agents, the intentional release of industrial
6 agents as a weapon, or any destructive device or explosive
7 in excess of five pounds or 2.26 kilograms. “Weapon of
8 mass destruction” does not include the development,
9 production, transfer, acquisition, retention, or possession
10 of any biological agent, toxin, or delivery system utilized
11 for prophylactic, protective, or peaceful purposes by any
12 university, research institution, private individual, or
13 hospital which is registered with the Centers for Disease
14 Control and Prevention (CDC) pursuant to Part 113
15 (commencing with Section 113.1) of Subchapter E of
16 Chapter 1 of Title 9 of the Code of Federal Regulations,
17 or any successor provisions.

18 (2) “Chemical agents” includes, but is not limited to,
19 the following nerve agents:

20 (A) Tabun (GA).

21 (B) Sarin (GB).

22 (C) Soman (GD), GF, and VX.

23 (D) Choking Agents.

24 (E) Phosgene (CG) and Diphosgene (DP).

25 (F) Blood Agents.

26 (G) Hydrogen Cyanide (AC), Cyanogen Chloride
27 (CK), Arsine (SA).

28 (H) Blister Agents, including mustards (H, HD [sulfur
29 mustard], HN-1, HN-2, HN-3 [nitrogen mustard]),
30 arsenicals, such as Lewisite (L), urticants, such as CX; and
31 incapacitating agents, such as BZ, or any analog of these
32 agents.

33 (3) “Biological or biologic agents” includes pathogens,
34 such as bacteria, viruses, rickettsia, yeasts, fungi, or
35 genetically engineered pathogens, toxins, and
36 endogenous biological regulators (EBRs). “Biological or
37 biologic agents” include any microorganism, virus, or
38 infectious substance capable of causing deleterious
39 changes in the environment; damaging food, water, or
40 equipment supplies; or causing diseases, death, or

1 biological malfunction in humans, plants, or other living
2 organisms.

3 (4) “Nuclear or radiological agents” includes any
4 improvised nuclear device (IND) which is any explosive
5 device designed to cause a nuclear yield; any radiological
6 dispersal device (RDD) which is any explosive device
7 utilized to spread radioactive material; or a simple
8 radiological dispersal device (SRDD) which is any act or
9 container designed to release radiological material as a
10 weapon without an explosion.

11 (b) The intentional release of a dangerous chemical or
12 hazardous material generally utilized in an industrial or
13 commercial process shall be considered use of a weapon
14 of mass destruction when a person knowingly utilizes
15 those agents with the intent to cause harm and the use
16 places persons or animals at risk of serious injury, illness,
17 or death, or endangers the environment.

18 (c) The knowing synthesis, deployment, use, or
19 possession of any destructive device or explosive in excess
20 of five pounds or 22.6 kilograms, or the knowing
21 possession of the components necessary to make the
22 destructive device or explosive, with the intent to cause
23 injury or death, shall be considered use of a weapon of
24 mass destruction. The lawful use of chemicals for
25 legitimate industrial, agricultural, or commercial
26 purposes is not proscribed by this article.

27 11418. (a) Any person, without lawful authority, who
28 possesses, develops, manufactures, produces, transfers,
29 acquires, or retains any weapon of mass destruction, or a
30 deliver system for enabling its use, shall be guilty of a
31 felony punishable in the state prison for 8, 10, or 12 years,
32 provided that any person who has been previously
33 convicted of Section 11411, 11412, 11413, 11460, 12303.1,
34 12303.2, or 12303.3 shall be punished in the state prison for
35 a period of 16, 20, or 24 years.

36 (b) (1) Any person who uses or directly employs a
37 weapon of mass destruction against another person shall
38 be punished by life in prison. If a human death or serious
39 injury results no parole shall be available.

(2) Any person who uses a weapon of mass destruction against the water or food supply shall be punished by life in the state prison.

(3) Any person who maliciously uses a weapon of mass destruction against animals or to knowingly cause harm to the environment shall be punished by a fine of one hundred thousand dollars (\$100,000), imprisonment in the state prison for 4, 8, or 12 years, or both.

(c) Any person who knowingly threatens, attempts to develop, or use a chemical, biological, nuclear or radiological weapon, or who uses recombinant technology or any other biological advance to create new pathogens or more virulent forms of existing pathogens for those purposes, shall be punished by a fine of two hundred fifty thousand dollars (\$250,000), imprisonment in the state prison for 4, 8, or 12 years, or both.

11419. (a) (1) Any person or entity possessing any of the restricted biological agents enumerated in paragraph (b) shall be punished by a fine of two hundred fifty thousand dollars (\$250,000), imprisonment in the state prison for 4, 8, or 12 years, or both.

(2) Any university, research institution, private company, or individual registered with the Centers for Disease Control and Prevention (CDC) pursuant to Part 113 (commencing with Section 113.1) of Subchapter E of Chapter 1 of Title 9 of the Code of Federal Regulations, or any successor provisions, shall not be subject to this section.

(b) For the purposes of this section, “restricted biological agents” means the following:

(1) Viruses: Crimean-Congo hemorrhagic fever virus, eastern equine encephalitis virus, ebola viruses, equine morbillivirus, lassa fever virus, marburg virus, Rift Valley fever virus, South African hemorrhagic fever viruses (Junin, Machupo, Sabia, Flexal, Guanarito), tick-borne encephalitis complex viruses, variola major virus (smallpox virus), Venezuelan equine encephalitis virus, viruses causing hantavirus pulmonary syndrome, yellow fever virus.

1 (2) Bacteria: bacillus anthracis (commonly known as
2 anthrax), brucella abortus, brucella melitensis, brucella
3 suis, burkholderia (pseudomonas) mallei, burkholderia
4 (pseudomonas) pseudomallei, clostridium botulinum,
5 francisella tularensis, yersinia pestis (commonly known as
6 plague).

7 (3) Rickettsiae: coxiella burnetii, rickettsia
8 prowazekii, rickettsia rickettsii.

9 (4) Fungi: coccidioides immitis.

10 (5) Toxins: abrin, aflatoxins, botulinum toxins,
11 clostridium perfringens epsilon toxin, conotoxins,
12 diacetoxyscirpenol, ricin, saxitoxin, shigatoxin,
13 staphylococcal enterotoxins, tetrodotoxin, T-2 toxin.

14 (c) (1) This section shall not apply to any physician,
15 veterinarian, pharmacist, or licensed medical
16 practitioner authorized to dispense a prescription under
17 Section 11026 of the Health and Safety Code, or
18 universities, research institutions, or pharmaceutical
19 corporations, or any person possessing the agents
20 pursuant to a lawful prescription issued by a person
21 defined in Section 11026 of the Health and Safety Code,
22 if the person possesses vaccine strains of the viral agents
23 Junin virus strain #1, Rift Valley fever virus strain MP-12,
24 Venezuelan equine encephalitis virus strain TC-83 and
25 yellow fever virus strain 17-D; any vaccine strain
26 described in Section 78.1 of Subpart A of Part 78 of
27 Subchapter C of Chapter 1 of Title 9 of the Code of
28 Federal Regulations, or any successor provisions, and any
29 toxin for medical use, inactivated for use as vaccines, or
30 toxin preparation for biomedical research use at a median
31 lethal dose for vertebrates of more than 100 ng/kg, as well
32 as any national standard toxin required for biologic
33 potency testing as described in Part 113 (commencing
34 with Section 113.1) of Subchapter E of Chapter 1 of Title
35 9 of the Code of Federal Regulations, or any successor
36 provisions.

37 (2) For the purposes of this section, no person shall be
38 deemed to be in possession of an agent if the person is
39 naturally exposed to, or innocently infected or
40 contaminated with, the agent.

1 (d) Any peace officer who encounters any of the
2 restricted agents mentioned above shall immediately
3 consult with a local public health officer to ensure proper
4 consideration of any public health risk, identify public
5 health and disease control hazards, and initiate any
6 necessary public health response.

7 SEC. 2. No reimbursement is required by this act
8 pursuant to Section 6 of Article XIII B of the California
9 Constitution for certain costs that may be incurred by a
10 local agency or school district because in that regard this
11 act creates a new crime or infraction, eliminates a crime
12 or infraction, or changes the penalty for a crime or
13 infraction, within the meaning of Section 17556 of the
14 Government Code, or changes the definition of a crime
15 within the meaning of Section 6 of Article XIII B of the
16 California Constitution.

17 However, notwithstanding Section 17610 of the
18 Government Code, if the Commission on State Mandates
19 determines that this act contains other costs mandated by
20 the state, reimbursement to local agencies and school
21 districts for those costs shall be made pursuant to Part 7
22 (commencing with Section 17500) of Division 4 of Title
23 2 of the Government Code. If the statewide cost of the
24 claim for reimbursement does not exceed one million
25 dollars (\$1,000,000), reimbursement shall be made from
26 the State Mandates Claims Fund.

27 Notwithstanding Section 17580 of the Government
28 Code, unless otherwise specified, the provisions of this act
29 shall become operative on the same date that the act
30 takes effect pursuant to the California Constitution.

